

ORIGINAL

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FILED

DISTRICT COURT OF GUAM

AUG 10 2005

MARY L.M. MORAN
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

UNITED STATES OF AMERICA,)
)
Plaintiff,)

CRIMINAL CASE NO. 98-00310

vs.)

**SECOND AMENDED
PLEA AGREEMENT**

REX S. ALADO a/k/a "REX",)
)
Defendant.)

Pursuant to Rule 11(c)(1)(C), the United States and the defendant, REX S. ALADO a/k/a "REX", enter into the following plea agreement:

1. The defendant agrees to enter a guilty plea to Count III of an indictment charging him with conspiracy to possess crystal methamphetamine "ice" with intent to distribute in violation of 21 U.S.C. § § 841(a)(1) and 846. The government will move to dismiss Counts I and II upon sentencing.

2. The defendant, REX S. ALADO a/k/a "REX", further agrees to fully and truthfully cooperate with federal law enforcement agents concerning their investigation of the

1 importation, possession, and distribution of controlled substances, and related unlawful activities,
2 including the disposition of profits from and assets relating to such activities. He agrees to
3 testify fully and truthfully before any grand juries and at any trials or proceedings against any
4 other co-conspirators if called upon to do so for the United States, subject to prosecution for
5 perjury for not testifying truthfully. The United States will make this cooperation known to the
6 Court prior to the defendant's sentencing. The defendant further understands that he remains
7 liable and subject to prosecution for any non-violent Federal or Territorial offenses that he does
8 not fully advise the United States, or for any material omissions in this regard. In return for this
9 cooperation, the United States agrees not to prosecute defendant in the District of Guam or the
10 Northern Mariana Islands for any other non-violent offenses which he reveals to federal
11 authorities.

12 3. The defendant, REX S. ALADO a/k/a "REX", understands and agrees that any and all
13 assets or portions thereof acquired or obtained by him as a direct or indirect result of illegal
14 trafficking in drugs or used to facilitate such illegal activity shall be surrendered to the United
15 States or any lawful agency as may be directed by the Court. The assets to be surrendered
16 include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property and
17 real property.

18 4. The defendant, REX S. ALADO a/k/a "REX", understands that the maximum
19 sentence for conspiracy to possess crystal methamphetamine a/k/a "ice" in excess of 100 grams
20 with intent to distribute is incarceration for life, a \$4,000,000 fine, and a minimum mandatory
21 term of ten (10) years of incarceration which may not be stayed or suspended by the court. Any
22 sentence imposed shall include a term of supervised release of at least five (5) years in addition
23 to such terms of imprisonment, as well as a \$100.00 special assessment fee. Defendant also
24 understands a sentence of supervised release could be revoked during the term of such supervised
25 release, thereby resulting in additional incarceration of defendant for up to five (5) years. The
26 \$100 special assessment fee must be paid immediately upon sentencing. The government will
27 recommend a fine within the Sentencing Guidelines range. If defendant is financially unable to
28

1 immediately pay the fine in full, defendant agrees to make a full disclosure of his financial status
2 to the United States Attorney's Office by completing a Financial Disclosure Form (OBD-500) for
3 purpose of fixing a monthly payment schedule. Defendant understands that, by law, interest
4 accrues on any remaining balance of the debt.

5 5. The defendant understands that to establish a violation of conspiracy to possess crystal
6 methamphetamine a/k/a "ice" with intent to distribute, the government must prove each of the
7 following elements beyond a reasonable doubt:

8 First: there was an agreement between the defendant and at least
9 one other person to possess with intent to distribute over 100 grams of
crystal methamphetamine a/k/a "ice," and

10 Second, the defendant became a member of the conspiracy knowing of its object
11 to possess with intent to distribute "ice," and intending to accomplish it.

12 6. The defendant understands that the United States Probation Office will calculate a
13 "sentencing range" within the U.S. Sentencing Guidelines. The defendant understands the
14 Sentencing Guidelines are advisory, but will be used by the District Court in fashioning the
15 sentence. The defendant also understands that the facts he stipulates to herein will be used by
16 probation, pursuant to 1B1.2 of the Sentencing Guidelines, in calculating the advisory guidelines
17 level:

18 a. The defendant was born on 1971 and is a citizen of the Republic of the Philippines.

19 b. If the defendant cooperates with the United States by providing information
20 concerning the unlawful activities of others, the government agrees that any self-incriminating
21 information so provided will not be used against defendant in assessing his punishment, and
22 therefore, pursuant to § 1B1.8 of the sentencing guidelines, such information should not be used
23 in determining the applicable guidelines range.

24 c. Beginning in 1998, and continuing until November 11, 1998, the defendant, Alwin
25 Cayas, Marcelo Penas, and others met, discussed and agreed to possess with intent to distribute
26 and distribute crystal methamphetamine a/k/a "ice," a Schedule II controlled substance, from
27 California to Guam. Defendant and Penas discussed and agreed that Cayas would travel from
28 Los Angeles to Guam for the purpose of bringing crystal methamphetamine to Guam and

1 distributing it to others for profit. The defendant made the reservations for the flight. The
2 defendant also gave Penas two reserve dive tanks, and two plastic bags containing over 1700
3 grams of ice, and asked Peas to conceal them inside the tanks. The defendant also drove Cayas,
4 Penas, and the tanks containing the drugs to the airport prior to their departure to Guam. On
5 November 10, 1998, both Cayas and Penas were passengers aboard a Continental Airlines flight
6 which arrived at the Guam International Airport from Honolulu, Hawaii. Cayas was referred to
7 Guam Customs officers for secondary inspection, and it was discovered that he was carrying a
8 hard shell case with diving equipment including two aluminum reserve tanks, and concealed in
9 the bottoms of both tanks were packages of crystal methamphetamine a/k/a "ice." The total gross
10 weight, including packaging, of the drugs was 1801.5 grams. A forensic chemist analyzed the
11 controlled substance and determined that it was d-methamphetamine hydrochloride a/k/a ice.
12 The total net weight was 1,736 grams and was 97% pure.

13 7. Pursuant to Fed.R.Crim.P. 11(c)(1)(C), the government and defendant agree and
14 stipulate that the appropriate sentence shall be a period of incarceration not to exceed time served
15 at the time of sentencing, and a period of five (5) years of supervised release. The government
16 will move for a downward departure motion on account of the substantial assistance the
17 defendant has provided to date pursuant to Section 5K1.1 of the Guidelines and 18 U.S.C.
18 Section 3553(e). The parties will request immediate sentencing to the extent practicable taking
19 into account the schedule of the U.S. Probation Office.

20 Defendant understands the Court is not bound to accept this disposition of the case and
21 may reject the agreement either at the time defendant enters his plea or after receiving and
22 considering a presentence report. If the Court accepts this agreement, the Court shall inform
23 defendant that it will embody in the judgment and sentence the disposition provided for in this
24 agreement. If the Court rejects this agreement, the Court shall, on the record, inform the parties
25 of this fact, advise defendant personally in open court or, on a showing of good cause, in camera,
26 that the Court is not bound by this plea agreement, afford defendant the opportunity to then
27 withdraw his plea, and advise defendant that if defendant persists in his guilty plea, the
28 disposition of the case may be less favorable to defendant than that contemplated by this plea

1 agreement and impose upon defendant any sentence up to and including the maximum sentence
2 of life imprisonment, and a term of supervised release greater than five (5) years.

3 8. The defendant understands that this plea agreement depends on the fullness and
4 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
5 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
6 material omissions or intentional misstatements or engage in criminal conduct after the entry of
7 his plea agreement and before sentencing, the government will be free from its obligations under
8 the plea agreement. Thus, defendant, in addition to standing guilty of the matters to which he has
9 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
10 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
11 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
12 any and all information, in whatever form, that he has provided pursuant to this plea agreement
13 or otherwise; defendant shall not assert any claim under the United States Constitution, any
14 statute, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules
15 of Evidence, or any other provision of law, to attempt to bar such use of the information.

16 9. In exchange for the government's concessions in this plea agreement, the defendant
17 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
18 the sentence imposed in this case. The defendant understands and agrees that the government
19 has bargained for a criminal conviction arising from his criminal conduct. If at any time
20 defendant's guilty plea or conviction is rejected, withdrawn, vacated, or reversed, for whatever
21 reason or is rendered invalid for any reason, or if any change of law renders the conduct for
22 which he was convicted to be non-criminal, defendant agrees that he will enter a guilty plea to
23 another charge encompassing the same or similar conduct. In such event, defendant waives any
24 objections, motions, or defenses based upon the Statute of Limitations, Speedy Trial Act, or
25 constitutional restrictions as to the time of the bringing of such charges.

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10. The defendant acknowledges that he has been advised of his rights as set forth below prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has had sufficient opportunity to reflect upon, and understands the following:

a. The nature and elements of the charge and the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;

b. His right to be represented by an attorney;

c. His right to plead not guilty and the right to be tried by a jury and at that trial, the right to be represented by counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself, that is, the right not to testify;

d. That if he pleads guilty, there will not be a further trial of any kind on the charges to which such plea is entered so that by entering into this plea agreement, he waives, that is, gives up, the right to a trial;

e. That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions about the offenses to which he has pled, under oath, and that if he answers these questions under oath, on the record, his answers may later be used against him in prosecution for perjury or false statement if an answer is untrue;

f. That he agrees that the plea agreement is voluntary and not a result of any force, threats or promises apart from this plea agreement;

g. That he has read the plea agreement and understands it.

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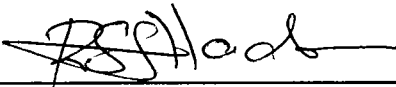
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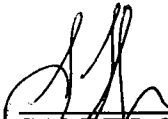
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1 h. The defendant is satisfied with the representation of his lawyer and feels that his
2 lawyer has done everything possible for his defense.
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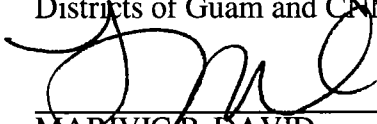
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5 DATED: 8-10-05

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7 REX A. ALADO a/k/a "REX"
8 Defendant

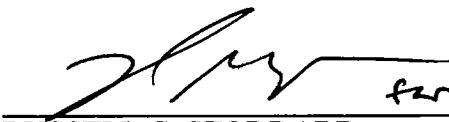
9 DATED: 8-10-05

10 
11 SAMUEL S. TEKER
12 Attorney for Defendant

13 DATED: 8/10/05

14 By: 
15 MARIVIC P. DAVID
16 Assistant U.S. Attorney

17 DATED: 8/10/05

18 
19 RUSSELL C. STODDARD
20 First Assistant U.S. Attorney